



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0090]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption from the Automobile Carriers Conference of the American Trucking Associations.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from the Automobile Carriers Conference (ACC) of the American Trucking Associations (ATA) requesting that motor carriers operating stinger steered automobile transporter equipment be relieved from the requirement to place warning flags on projecting loads of new motor vehicles. The Federal Motor Carrier Safety Regulations (FMCSRs) require any commercial motor vehicle (CMV) transporting a load that extends more than 4 feet beyond the rear of the vehicle to be marked with a single red or orange fluorescent warning flag at the extreme rear if the projecting load is 2 feet wide or less, and two warning flags if the projecting load is wider than 2 feet. The flags must be located to indicate the maximum width of loads which extend beyond the sides and/or rear of the vehicle. The ACC believes that the reflex reflectors that are required to be installed on the new motor vehicles being transported, in conjunction with the various marking and conspicuity requirements required on the trailer transporting the new vehicles, provide a level of safety that is greater than that achieved by the warning flags required by the FMCSRs.

DATES: Comments must be received on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2018-0090 using any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the Federal electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- Hand Delivery: Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the “Public Participation” heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the

system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Public participation: The <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the “help” section of the <http://www.regulations.gov> Web site as well as the DOT’s <http://docketsinfo.dot.gov> Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA– 21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

ACC Application for Exemption

The ACC has applied for an exemption from 49 CFR 393.87, requesting that motor carriers operating stinger steered automobile transporter equipment be relieved from the requirement to place warning flags on projecting loads of new motor vehicles. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.87 of the FMCSRs requires any commercial motor vehicle transporting a load which extends beyond the sides by more than 4 inches, or more than 4 feet beyond the rear, to have the extremities of the load marked with red or orange fluorescent warning flags. Each warning flag must be at least 18 inches square. There must be a single flag at the extreme rear if the projecting load is 2 feet wide or less, and two warning flags are required if the projecting load is wider than 2 feet. The flags must be located to indicate the maximum width of loads which extend beyond the sides and/or rear of the vehicle.

In its application, the ACC states “With the enactment of the FAST [Fixing America’s Surface Transportation] Act in December 2015, stinger steered automobile transporter equipment are permitted a rear vehicular overhang allowance of not less than six feet. [49 USC 31111(b)(1)(G)] Prior to the enactment of the FAST Act, the minimum rear overhang allowance for all automobile transporters was a minimum of four feet. [23 CFR Sec. 658.13(e)(ii)].”

The ACC states:

The transportation of new motor vehicles poses a dilemma in adhering to the flag requirements. Affixing flags or anything else to the surfaces of the vehicles is not allowed by vehicle manufacturers as it can lead to scratches and other damage to the vehicle. Auto transporters have attempted to adhere to the intent of the regulations by affixing flags at the end of the trailers (see attachments). This in itself can still lead to vehicle damage by virtue of the flag rubbing on the vehicle surface. However, this attempt to comply with the regulatory intent does not adhere to the letter of the regulations and has resulted in carriers receiving numerous citations for being in violation of the flag requirements.

The ACC states that motor vehicles are the only commodity to be transported that must adhere to the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, “*Lamps, reflective devices and associated equipment*,” and that FMVSS No. 108 has required motor vehicles to be equipped with side-facing reflex reflectors in addition to amber reflectors in the front of the vehicle and red reflectors in the rear of the vehicle since 1968. The ACC contends that the reflective devices that are required to be on the vehicles being transported, along with the required lighting and conspicuity treatments on the trailer “more than adequately adhere to the intent of Sec. 383.87 in notifying the motoring public that a load extends more than four feet beyond the rear of the trailer.” In addition, ACC states that FMVSS No. 108 imposes specific performance criteria for the required reflectors, whereas there are no such performance requirements for the flags required by the FMCSRs.

The ACC states that the automobile transporter vehicle population is a fraction of the overall CMV population, consisting of approximately 16,000 units, and that the stinger steered vehicle population is a subset of that. Further, ACC notes that since the enactment of the FAST Act, the industry has not experienced an increase in collisions into the rear end of trucks with the additional 2 feet of

allowable overhang. The ACC states that “Statistics show that the accident frequency of collisions into the rear end of auto transporters is miniscule with a rate of less than 0.05%.”

The exemption would apply to all motor carriers operating stinger steered automobile transporter equipment. The ACC believes that the reflex reflectors that are required to be installed on the new motor vehicles being transported, in conjunction with the various marking and conspicuity requirements required on the trailer transporting the new vehicles, provide a level of safety that is greater than that achieved by the warning flags required by the FMCSRs.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on ACC’s application for an exemption from 49 CFR 393.87. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the “Addresses” section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: February 20, 2018.

Larry W. Minor,
Associate Administrator for Policy.

[FR Doc. 2018-03943 Filed: 2/26/2018 8:45 am; Publication Date: 2/27/2018]